IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7163 of 2000
with
CRIMINAL MISC.APPLICATION No 7542 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TURABBHAI ABDULHUSAIN PATENT

Versus

AJAGARALI ONALI LOKHANDWALA

Appearance:

1. Criminal Misc.Application No. 7163 of 2000
MR NV SOLANKI for Petitioner No. 1
MR KB ANANDJIWALA for Respondent No. 1
PUBLIC PROSECUTOR for Respondent No. 2

2. Criminal Misc.Application No. 7542 of 2000
MR POOJARI, Ld. APP for Petitioner No. 1
MR KB ANANDJIWALA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 11/12/2003

ORAL JUDGEMENT

1. Both the present petitions arise out of the order dated 28-11-2000 passed by the Court of learned Sessions Judge, Panchmahals in Criminal Misc. Application No.964 of 2000, whereby the accused Ajagarali Onali Lokhandwala, opponent No.1 herein is ordered to be released on bail. The petition being Criminal Misc. Application No.7542/2000 is preferred by the State for cancellation of bail, whereas for the same relief of cancellation of bail the original complainant has preferred Criminal Misc. Application No.7163/2000. Since the facts are interconnected, they are being dealt with together.

2. The short facts of the case appears to be that a complaint came to be filed under Sections 302, 307, 325 and 114 of IPC read with 135 of BP Act. in connection with the offences registered vide Crime Register No.I-314/2000 of Godhra Police Station. The bail application was submitted by Opponent No.1 together with his son, Husain Ajgarali Lokhandwala, and the learned Sessions Judge heard the matter and partly allowed the application, whereby applicant No.1 i.e. opponent No.1 herein was released on bail, whereas application of applicant No.2 therein was rejected. It appears that Husain Ajgarali Lokhandwala preferred bail application being Criminal Misc. Application No.7170/2000 before this Court and this Court (Coram: C.K.Buch, J.), as per the order dated 27-12-2000 allowed the application after hearing the complainant and the State on various conditions as mentioned in the order at para 17. Such conditions are as under:

"(a) not take undue advantage of his liberty or abuse his liberty;

(b) not act in a manner injurious to the interest of the prosecution;

(c) maintain law and order;

(d) mark his presence before Raopura Police Station, Vadodara on every 1st and 15th of each month between 9.00 a.m. to 5.00 p.m. for a period of six (6) months;

(e) not leave the local limits of State of Gujarat without the prior permission of the Sessions Judge concerned;

(f) furnish the address of his residence at the time of execution of the bond and shall not change the residence without prior permission of this Court;

(g) not enter into the local limits Panch Mahal District without prior permission of this Court, but for attending the Court in connection with this case he will be free to enter the limits for a period to the extent necessary and will leave the limits thereafter within a period of 4(four) hours soon after the case is adjourned, for a period of six (6) months.

(h) surrender his Passport, if any, to the lower Court within a week;

(i) If breach of any of the above conditions is committed, the concerned Sessions Judge will be free to issue warrant or take appropriate action in the matter.

(j) Bail before the lower Court having jurisdiction to try the case."

3. The pertinent aspect is that this Court even while releasing Husain on bail directed him to be away from Godhra and as it appears from the condition (d), he was to stay at Vadodara and to report at Raopura Police Station, Vadodara for a period of six months. It was also the condition to Husain in the said order that he shall not enter the limits of Panchmahals District without prior permission of this Court and the said condition of marking presence at Raopura Police Station, Vadodara and for not to enter the limits of Panchmahals District was for a period of six months. The condition was also provided to Husain to surrender the passport, if any, in the Lower Court within a week.

4. So far as the order of the learned Sessions Judge is concerned, there were three conditions; one was of marking presence at Godhra Town Police Station, the second was to prohibit him from doing any act which would cause damage to the prosecution case and the accused was prevented from doing any act of tampering with the prosecution witnesses and preventing them from telling any facts known to them with regard to the commission of

the offence; the third condition was for directing the opponent No.1 herein not to leave the boundaries of the Gujarat State without prior permission of the said Court till the charge-sheet is filed.

5. Having heard the learned APP for the State, Mr.Solanki, learned Counsel for complainant and Mr.Anandjiwala, learned Counsel for the accused, it appears that after opponent No.1 was released on bail as per the impugned order of the learned Sessions Judge dated 28-11-2000, on 4-12-2000 vide Crime Register No.255/2000, a complaint was lodged by the applicant herein against the accused for assaulting and for giving threat. The complainant himself is a witness and the injury certificate is also produced. It has been stated by Mr.Solanki at the bar that thereafter the police has investigated in connection with the said complaint registered on 4-12-2000 and the charge-sheet has been filed against opponent No.1 herein. It further appears that another complaint came to be filed on 7-3-2001 vide Crime Register No.86/2001 of Godhra Town Police Station by Rayhan Moiz Mithiborwala against opponent No.1 herein under Sections 324, 323, 504 and 114 of IPC and the allegation in the complaint is of giving assault and of giving threat. The injury certificate is also produced and Mr.Solanki for the original complaint has stated that the police has investigated in the said complaint and charge-sheet is also filed.

6. The learned APP for the State as well as Mr.Solanki for the original complainant submitted inter alia that the order passed by the learned Sessions Judge for releasing the opponent No.1 on bail is ex-facie without taking into consideration the material on record, more particularly of the eye-witnesses and the learned Judge ought not to have released the accused on bail in such a serious crime under Section 302 of IPC. They further submitted that even after the release on bail, the opponent No.1 herein has not only committed breach of the bail conditions, but has also gone to the extent of giving assault to the witnesses and also threat for withdrawal of the complaint. As per the police record also the offences are investigated in connection with the complaint for assault and threat and the charge-sheet has been filed in both the complaint and, therefore, such person should not be enlarged on bail. It was alternatively submitted that even if this Court is not inclined to interfere with the order passed by the learned Sessions Judge for released him on bail, the conditions be modified suitably with a view to ensure that the trial may continue in free and fair atmosphere

and the witnesses may not be threatened, so that the witnesses can also depose truth before the Court in free and fair atmosphere.

7. On behalf of opponent No.1, Mr.Anandjiwala contended inter alia that the complaint relates to the period of December, 2000 and March, 2001 and thereafter no incident has happened. It is also contended by Mr.Anandjiwala that the complaint is a bogus one in as much as the accused - opponent No.1 herein was at Ahmedabad at the relevant point of time. Mr.Anandjiwala also submitted that on the contrary in February, 2001 the complaint was filed by Opponent No.1 herein against Rayhan Moiz vide Crime Register No.49/2001 of Godhra Town Police Station for the offences under Sections 323, 324, 504, 506(2), 114 of the IPC for assaulting the accused by Rayhan Moiz. However, Mr.Anandjiwala has no information as to whether any charge-sheet is filed in connection with the said complaint by the police, but Mr.Solanki for the original complainant submitted that as per his information charge-sheet is not filed.

8. Considering the above, it does prima facie appear that the learned Sessions Judge has not properly exercised the judicial discretion for releasing opponent No.1 herein on bail on 28-12-2000 for the serious offences under Section 302, more particularly when the investigation was going on. I would have considered the matter for cancellation of the bail further taking into consideration the prima facie evidence against the accused as per prosecution case, however, since the investigation is over and the charge-sheet is also filed and the coordinate Bench of this Court (Coram: C.K.Buch, J.) as per the order dated 27-12-2000 has also released the accused Husain in Criminal Misc. Application No.7170 of 2000, I find it proper not to interfere with the order of the learned Sessions Judge for releasing the accused Opponent No.1 herein on bail in view of subsequent order passed by this Court on 27-12-2000.

9. However, there is considerable force in the contention raised on behalf of the State as well as Original Complainant by the learned APP and Mr.Solanki respectively in as much as it has come on record that after the release on bail by the learned Sessions Judge on 28-12-2000, as per the police record and as per the subsequent charge-sheet filed in connection with the said complaint, the original complainant was assaulted and threatened by accused - Opponent No.1 herein. Moreover, the said aspect is coupled with another complaint lodged against the accused by Rayhan Moiz vide Crime Register

No.86/2000 for giving assault and for giving threat. So far as the record of the other complaint filed by the accused vide Crime Register No.49/2000 is concerned, no details are available, but the aforesaid goes to show that opponent No.1 has committed breach of the conditions of bail. Even if the conditions are considered as they were ordered by the learned Sessions Judge, then also there is breach of condition No.2 of the order dated 28-11-2000 passed by the learned Sessions Judge. Since this matter pertains to the order of 2000, however, on account of the pendency of the present petition, the position is continued and not only that, since the R & P were called for, the trial has also not commenced, in view of the aforesaid peculiar facts and circumstances, I find that instead of cancelling the bail on account of the breach of conditions committed by the accused - opponent No.1 herein, the same can be taken care of by imposing further conditions for bail to the accused with a view to ensure that such incident of threatening of the witnesses or tampering with the prosecution witnesses are not repeated and the trial can be conducted in free and fair atmosphere and the witnesses can depose truth in free and fair atmosphere as and when the trial commences.

10. Therefore, in view of the aforesaid discussion, the bail order passed by the learned Sessions Judge for releasing accused - opponent No.1 on bail shall continue with the following additional conditions as stated herein after:

(a) Opponent No.1 herein shall not enter the limits of Panchmahals District for a period of nine months from today;

(b) he shall also surrender his passport, if any, and he shall not leave the limits of Gujarat State without prior permission of the Sessions Court concerned;

(c) the police shall be at liberty to verify as to whether Opponent No.1 herein is having any weapon for which licence is required under the Arms Act, and if it is found that the weapon is in his (opponent No.1's) possession, the same shall be either surrendered by Opponent No.1 and if not surrendered by him, the police shall be at liberty to take the possession of the said weapon;

11. considering the other overall facts and circumstances of the case, the learned Sessions Judge

shall make an attempt to dispose of the trail as early as possible, preferably within a period of six months from the date of receipt of the writ of this Court.

Both the applications are partly allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent accordingly. The Registry shall send the concerned R & P to the learned Sessions Judge forthwith.

11-12-2003 (Jayant Patel, J.)

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